

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROSARIO TINA, and JESUS G. TINA,  
Plaintiffs,  
vs.  
COUNTRYWIDE HOME LOANS, INC., et  
al.,  
Defendants.

CASE NO. 08 CV 1233 JM (NLS)

**ORDER DENYING APPLICATION  
FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Plaintiffs Rosario Tina and Jesus G. Tina filed this action on July 10, 2008. The case was originally assigned to U.S. District Judge Marilyn Huff. Concurrent with the filing of the complaint, Plaintiffs filed an ex parte application for a temporary restraining order (“TRO”) and preliminary injunction staying the foreclosure of their property scheduled for July 11, 2008. On July 11, 2008, Judge Huff issued an order declining to grant ex parte injunctive relief and setting a briefing schedule regarding the application. The case was transferred to this court pursuant to the low-number rule on July 14, 2008. Defendants filed an opposition on July 15, 2008. The court finds this application appropriate for submission without oral argument. See Civ. L.R. 7.1(d)(1). For the reasons set forth below, the court hereby **DENIES** the application for a TRO and preliminary injunction.

**I. BACKGROUND**

According to the complaint, Plaintiffs owned property located at 1720 East Fourth Street in National City, California. (Compl. at 3 ¶ 5.) In August 2006, Plaintiffs obtained a loan from defendants Countrywide Home Loans, Inc. (“Countrywide”), and America’s Wholesale Lender. (See

1 id.) Defendant Reconstruct Co. is Countrywide's trustee for foreclosure servicing. (Id. at 3 ¶ 8.)  
 2 When Plaintiffs "fell behind" on their loan payments, Defendants instituted a non-judicial foreclosure  
 3 and trustee's sale. (Id. at 8 ¶ 24.) The foreclosure sale occurred on July 11, 2008. (Opp'n at 2.)

4 Plaintiffs assert four claims for relief. First, they seek a declaratory judgment that, inter alia,  
 5 Plaintiffs deserve relief under the Fair Debt Collections Practices Act and 15 U.S.C. § 1692. Second,  
 6 they seek injunctive relief pursuant to Cal. Bus. and Prof. Code § 17203. They allege that Defendants'  
 7 unlawful business practices include a violation of Cal. Civ. Code ¶ 2924. Third, they seek accounting  
 8 relief arising out of an alleged controversy regarding the amount of money Plaintiffs owe Defendants.  
 9 Fourth, they seek relief for "deceptive fraud and unfair business trade practices and other statutory  
 10 relief." The fourth claim alleges violations of the following five statutes: (1) the Truth in Lending Act  
 11 ("TILA"), 15 U.S.C. § 1611, et seq.; (2) the Real Estate Settlement Procedures Act ("RESPA"), 26  
 12 U.S.C. § 2605, et seq.; (3) the Home Ownership and Equity Protection Act of 1994 ("HOEPA"), 15  
 13 U.S.C. § 1602, et seq.; (4) 15 U.S.C. § 1692; and (5) Cal. Civ. Code § 1788.

## 14 **II. DISCUSSION**

### 15 **A. Legal Standards**

16 In the Ninth Circuit, the tests governing preliminary injunctions also apply to TROs. See, e.g.,  
 17 Superior Servs., Inc. v. Dalton, 851 F. Supp. 381, 384-85 (S.D. Cal. 1994). Preliminary injunctive  
 18 relief is available if the party meets one of two tests: (1) a combination of probable success and the  
 19 possibility of irreparable harm, or (2) the party raises serious questions and the balance of hardship  
 20 tips in its favor. Arcamuzi v. Cont'l Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987). "These two  
 21 formulations represent two points on a sliding scale in which the required degree of irreparable harm  
 22 increases as the probability of success decreases." Id. (internal quotation marks omitted). Under both  
 23 formulations, however, the party must demonstrate a "fair chance of success on the merits, or  
 24 questions serious enough to require litigation," and a "significant threat of irreparable injury." Id.;  
 25 see also Stanley v. Univ. of S. Cal., 13 F.3d 1313, 1320 (9th Cir. 1994) (party seeking preliminary  
 26 injunction must demonstrate inadequacy of legal remedies). A TRO "should be restricted to serving  
 27 [its] underlying purpose of preserving the status quo and preventing irreparable harm[.]" Granny  
 28 Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers, 415 U.S. 423, 439 (1974).

1           **B.       Analysis**

2           According to Defendants, the foreclosure sale occurred at 10:00 a.m. on July 11, 2008. (Decl.  
3 of K. Braithwaite at 4 ¶ 12.) Because a TRO would no longer preserve the former status quo, the  
4 application for a TRO and preliminary injunction is moot.

5           Even if the application were not moot, Plaintiffs fail to satisfy the requirements for emergency  
6 injunctive relief. The court agrees with Plaintiffs' contention that legal remedies are inadequate  
7 because only equitable relief can prevent a foreclosure sale. Nevertheless, the record presented by  
8 Plaintiffs consists largely of conclusory arguments with no factual evidentiary support. This showing  
9 falls far short of demonstrating a "fair chance of success on the merits." Arcamuzi, 819 F.2d at 937.  
10 Plaintiffs also have not demonstrated that the possibility of irreparable harm to them outweighs the  
11 likely hardship to Defendants. While foreclosure would cause Plaintiffs to lose their property, an  
12 injunction would prevent Defendants from proceeding with the long-scheduled sale of a property  
13 which, for Defendants, constitutes their exclusive remedy. Plaintiffs' inadequate showing of a "fair  
14 chance of success on the merits" bolsters the conclusion that Plaintiffs do not show a "significant  
15 threat" of irreparable harm. Arcamuzi, 819 F.2d at 937. Thus, on the "sliding scale" contemplated  
16 by Arcamuzi, 819 F.2d at 937, Plaintiffs fail to demonstrate a degree of relative hardship sufficient  
17 to offset their showing regarding success on the merits.


18           In sum, because the application is moot and the current evidentiary record does not form an  
19 adequate basis for injunctive relief, the court denies the application for a TRO and preliminary  
20 injunction.

21           **III.   CONCLUSION**

22           For the foregoing reasons, the court hereby **DENIES** the application for a temporary  
23 restraining order and preliminary injunction.

24           **IT IS SO ORDERED.**

25           DATED: August 5, 2008

26             
27           Hon. Jeffrey T. Miller  
28           United States District Judge